

PATENT
ATTORNEY DOCKET NO.: 056291-5057

DAE/18 #3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION of:

STOCKER et al.

Appln. No.: 09/963,686

Filed: September 27, 2001

FOR: HETEROCYCLIC DERIVATIVES WHICH
INHIBIT FACTOR Xa

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Attention: Office of Petitions
Commissioner of Patents
Box DAC
Washington, D.C. 20231

Date: March 19, 2003

Sir:

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**PETITION TO REVIVE AN ABANDONED
APPLICATION UNDER 37 C.F.R. § 1.137(b)**

Pursuant to the provisions of 37 C.F.R. §1.137(b), applicant (assignee Zeneca Limited, now AstraZeneca) hereby petitions through undersigned counsel to revive the above-referenced application which has been unintentionally abandoned by not responding to the Notice to File Missing Parts mailed October 15, 2001. The initial due date for filing such response was December 15, 2001. To date, no notification of abandonment has been received from the U.S. Patent and Trademark Office.

The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional by applicant, *i.e.*, applicant at no time during that period intended that the subject matter of this application be abandoned.

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In brief summary of the circumstances resulting in this inadvertent abandonment, the present application No. 09/963,686 was filed on September 27, 2001 as a continuation of parent application No. 09/297,768, which was the U.S. national phase of international application PCT/GB97/03033 filed November 4, 1997. Priority is claimed from two United Kingdom priority applications filed November 8, 1996 and July 29, 1997, respectively. This PCT application and all corresponding national applications are a part of applicant's patent Case Z70199, which, in turn, is one of about 20 technologically related patent cases arising out of applicant's cardiovascular research program to find compounds effective in the inhibition of the enzyme Factor Xa.

Thus, Case Z70199 is directed toward a particular genus of heterocyclic compounds and pharmaceutical compositions having enzyme Factor Xa inhibitory activity, and methods utilizing this activity, *e.g.*, in the treatment or prevention of thrombotic conditions such as coronary artery and cerebro-vascular disease. The parent application issued as U.S. Patent No. 6,300,330 (the '330 patent) on October 9, 2001, with claims that were intended to cover subject matter that was supported by the first of the two UK priority applications. The present continuing application was filed to claim the remaining subject matter not claimed in the '330 patent.

This continuing application was filed without fee, and a Notice to File Missing Parts was mailed by the U.S. Patent and Trademark Office on October 15, 2001. The undersigned forwarded the Notice to File Missing Parts by letter dated October 22, 2001 to Dr. Kenneth F. Mitchell, applicant's in house patent attorney located in Wilmington, Delaware, who was then responsible for coordinating the world-wide prosecution of the Factor Xa cases. At that time it was applicant's intent to transfer responsibility for coordinating the prosecution of this

extensive series of Factor Xa cases to Mair D. Thomas, an in house attorney for applicant

located in London, England. On October 25, 2001 Ms. Thomas was notified by Dr. Mitchell that the files related to this Factor Xa series had been boxed and were being shipped to Ms. Thomas in England.

Ms. Thomas was aware that a Global Product Team (hereinafter GPT) had been working on the development of at least one compound that fell within the generic scope of Case Z70199, but that interest in developing that particular compound had recently declined. However, Ms. Thomas was also aware that an active program was then underway at applicant's research facility in Mölndal, Sweden, with the objective of identifying other compounds within the Factor Xa technology that might be candidates for development. This Factor Xa project was and is being carried out under the guidance of Dr. Kenneth Granberg, who is a medicinal chemist with the Cardiovascular Research Area of the AstraZeneca Global Discovery Function (hereinafter simply referred to as "Discovery"). By at least late October-early November 2001, it is understood that responsibility for maintenance of the portfolio of Factor Xa patent cases was being transferred from the GPT back to Discovery. At about that time Dr. Granberg had underway a review of the various patent cases (PCT applications) underlying the Factor Xa project, and a few of the cases were identified as being of no further interest. However, on November 7, 2001, Dr. Granberg notified Ms. Thomas that "all other FXa patents must be maintained given our current discovery efforts."

In November 2001, Ms. Thomas had begun the massive project of reviewing the prosecution status of applications within the Factor Xa patent cases, including the applications under Case Z70199. In the course of this review, Ms. Thomas became aware of the undersigned's letter to Dr. Mitchell of October 22, 2001 in the present continuing

~~application, which forwarded the Notice to File Missing Parts and requested instructions.~~

Based on her quick review and understanding that the GPT was no longer pursuing development of the previously selected compound within the generic scope of Case Z70199, she advised the undersigned, by letter dated November 27, 2001, to discontinue prosecution of the continuation application and to take no further action and pay no further fees.

However, when sending this letter, Ms. Thomas inadvertently overlooked the instruction from Dr. Granberg that all remaining Factor Xa cases must be maintained given the current discovery efforts. Throughout this entire period, compounds that fall within the remaining scope of the present continuing application were of particular interest to Discovery as potential target compounds for development.

It is understood that Dr. Granberg met with Ms. Thomas in late January 2002 to discuss the patent situation underlying the Factor Xa project, but their discussion generally focused on the scope of the PCT applications, and did not get into the scope or status of corresponding applications and patents in the designated countries. It was not until March 5, 2003 that applicant first appreciated that the remaining subject matter that was to be pursued in the present continuing application had been abandoned in the United States. That abandonment was inadvertent and unintentional, and since that date diligent efforts have been underway to investigate and evaluate appropriate courses of action, leading to the filing of this Petition to Revive.

~~Applicant thus hereby petitions for revival of this application, and the following items~~
~~as set forth in 37 C.F.R. § 1.137(b) are submitted herewith:~~

(1) The Response to Notice to File Missing Parts, including the requested declaration and authorization to charge the necessary fees to Deposit Account No. 50-0310.

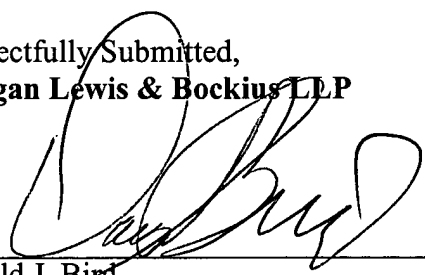
(2) Authorization to charge the petition fee, currently \$1300 as set forth in § 1.17(m),
to Deposit Account No. 50-0310.

(3) The above statement and explanation that the entire delay in filing the required
reply from the due date for the reply until the filing of a grantable petition pursuant to
§ 1.137(b) was unintentional, recognizing that the Commissioner may require additional
information where there is a question whether the delay was unintentional.

(4) It is understood that no terminal disclaimer is required inasmuch as the application
to be revived was filed after June 8, 1995.

Except for issue fees payable under 37 C.F.R. §1.18, the Commissioner is hereby
authorized by this paper to charge any additional fees during the entire pendency of this
application including fees due under 37 C.F.R. §§1.16 and 1.17 which may be required,
including any required extension of time fees, or credit any overpayment to Deposit Account
No. 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR**
EXTENSION OF TIME in accordance with 37 C.F.R. §1.136(a)(3).

Respectfully Submitted,
Morgan Lewis & Bockius LLP



Date: March 19, 2003
Morgan Lewis & Bockius LLP
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